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OFFICE OF PETITIONS

In re Patent No. 8,008,230 : DECISION ON REQUEST
Alain Gardner : FOR
Issue date: August 30, 2011 : RECONSIDERATION OF
Application No. 10/588,321 : PATENT TERM ADJUSTMENT
Filed: August 3, 2006 :
Atty Docket No. PRD2188USPCT :

This is a decision on the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. 1.705 filed October 19, 2011.

The request for reconsideration of the patent term adjustment indicated on the patent is **DISMISSED**.

On August 30, 2011, the application matured into U.S. Patent No. 8,008,230, with a revised patent term adjustment of 1010 days. On October 19, 2011, patentee timely submitted this request for reconsideration of patent term adjustment (with required fee), asserting that the correct number of days of Patent Term Adjustment is at least 1116 days. Patentee maintains that the period of B delay is 757 days, not 651 days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

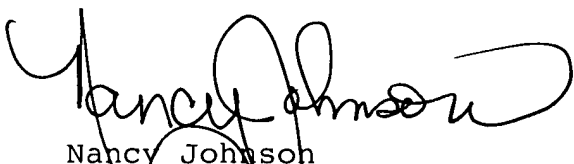
Patentee's argument has been considered, but not found persuasive. Patentee's calculation fails to take into account the period of appellate review excluded from the period of B delay under the Office's current interpretation of the statute.

The period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). An appeal to the Board of Patent Appeals and Interferences commences with the filing of a notice of appeal. See 35 U.S.C. 134(a). Generally, an appeal to the Board of Patent Appeals and Interferences ends with either 1) a Board decision, 2) the examiner reopening prosecution and issuing another Office action, or 3) the applicant filing a request to withdraw the appeal and reopen prosecution (e.g. the filing of a request for continued examination). In this instance the period consumed by appellate review is (106) days, beginning on January 14, 2011, the date of filing of the notice of appeal and ending on April 29, 2011, the subsequent date of the mailing of a notice of allowance. Accordingly, it is concluded that the B delay was properly entered as 651 (757 - 106) days.

However, the Office issued a Notice of proposed rulemaking entitled *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review and Information Disclosure Statements*, 76 FR 18990 (April 6, 2011). To the extent that the final rule on *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review* revises the interpretation of appellate review applied in this decision, Patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the date of the final rule to file a request for reconsideration. No extensions of time will be given under 37 CFR 1.136(a).

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.



Nancy Johnson
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Office of Petitions